Supreme Court, U.S.
FILED
SEP 30 1987
JOSEPH F. SPANIOL, JR.
CLERK

87- 524

No._____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1987

* *

CLARENCE RUDOLPH,

Petitioner

vs.

STATE OF ALABAMA,

Respondent

* *

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

* *

BRIEF OF PETITIONER

* *

J. LOUIS WILKINSON
503 Frank Nelson Building
Birmingham, Alabama 35203
(205) 252-4959

CHARLES M. PURVIS
506 Frank Nelson Building
Birmingham, Alabama 35203
(205) 252-4908

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QUESTIONS PRESENTED

1. Were the Petitioner's due process rights violated when the trial court accepted the Petitioner's guilty plea, which did not comply with the constitutional requirements set out in **Boykin vs. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) ?

PARTIES

In the Circuit Court of Jefferson County, Alabama, the Court of Criminal Appeals of Alabama and the Supreme Court of Alabama, the parties were: The State of Alabama, who is the Respondent herein, and Clarence Rudolph, who is the Petitioner herein.

The matters at issue here were first raised in the Circuit Court of Jefferson County, Alabama, and have been at issue throughout these proceedings.

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OPINIONS BELOW

The opinion of the Court of Criminal Appeals of Alabama affirming the Petitioner's conviction was without a written opinion.

A copy of the same is submitted in Appendix "A" to this petition.

The order of the Alabama Supreme Court denying the Petitioner's writ of certiorari was without written opinion.

A copy of the same is submitted in Appendix "B" to this petition.

JURISDICTION

The order of the Supreme Court of Alabama wherein the writ of certiorari was denied was issued on July 31, 1987, and this petition is filed within sixty days of that date.

The Jurisdiction of this Honorable Court is invoked under 28 United States Code, Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved in Petitioner's writ include the Fifth Amendment to the Constitution of the United States, and the Fourteenth Amendment to the Constitution of the United States. A copy of these amendments are submitted as Appendix "C" to this petition.

STATEMENT OF THE CASE AND FACTS

I

The Petitioner was indicted for the offense of Violation of the Uniform Alabama Controlled Substances Act - Trafficking. He then entered a guilty plea to the lesser offense of Violation of the Uniform Alabama Controlled Substances Act - Possession. He was sentenced to a term of ten (10) years in the State penal system. An appeal followed to the Alabama Court of Criminal Appeals.

The basis of the Petitioner's appeal was as follows: his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution were violated when the trial court accepted a guilty plea that did not meet the requirements set out in **Boykin vs. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

On February 24, 1987, the Court of Criminal Appeals of Alabama affirmed, without opinion, the conviction of the Circuit Court. See Appendix "A". An application for rehearing filed in the Court of Criminal Appeals raising the same issues was denied, without opinion, on March 24, 1987.

Mr. Rudolph then petitioned the Supreme Court of Alabama for a Writ of Certiorari alleging the same issues. The petition was denied, without opinion, on July 31, 1987. See Appendix "B".

II

The petition is based on the following facts:

The Petitioner was indicted for Violation of the Uniform Alabama Controlled Substances Act - Trafficking. The charge

was then amended to the lesser offense of Violation of the Uniform Alabama Controlled Substances Act - Possession. The substance in question was 4.02 pounds of cannabis. The Petitioner entered a guilty plea and received a ten (10) year sentence, six (6) months to be served in the state penal system and the execution of the remainder of the sentence suspended, with the Petitioner to serve five (5) years on probation.

ARGUMENT

It is a fundamental precept of all Constitutional law that no Court shall accept a plea of guilty without first determining that the plea of guilty is voluntary and not the result of promises apart from a plea agreement.

Obviously, just as in the case of a pre-trial confession, if the accused enters a plea because of a promise of leniency, then, the chances of the action being erroneous is unacceptably high. That would be an involuntary plea.

The authorities which discuss this whole area most completely, in addition to **Boykin vs. Alabama**, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969), are more recent cases such as **Santabello vs. New York**, 424 U.S. 257, 92 S.Ct. 495, and **McCarthy vs. United States**, 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418.

However, the principle is not an abstruce one. Simply stated, neither the Court nor any state officer should induce a confession or plea by a hope of some promise or reward. If it does, the plea or statement is vitiated.

In the instant case, the trial judge flagrantly disregarded the basic principles even though his actions were probably well-intentioned.

Firstly, it was never made clear that the accused even understood his basic rights (R. 4).

> " **THE COURT: Does he understand his rights?**
>
> **MR. GOMANY: I understood he could not read and write, and I read them to him orally.**
>
> **THE COURT: Okay. Are you satisfied that by taking a ten year**

sentence and applying for probation, that he is doing the right thing ?

MR. GOMANY: Yes, sir, Judge. "

The colloquy falls far short of establishing that the Petitioner knowingly waived his right to all Constitutional protections. It does show that the accused could not read. Secondly, it shows that the Petitioner's attorney was satisfied that he was doing the right thing. It establishes nothing concerning the defendant himself.

The real problem, however, is that the Court clearly induced the plea by a promise of reward.

See the following (R. 5):

" THE COURT: I hope you are pleading guilty because of some other reason besides saving time.

THE DEFENDANT: Well, I have to go to jail.

THE COURT: Sir ?

THE DEFENDANT: Well - - well, I don't know.

THE COURT: Well, the minimum on the trafficking is three years, and you don't get parole, you go down for at least 36 months. Okay ?

THE DEFENDANT: Thirty-six months when ?

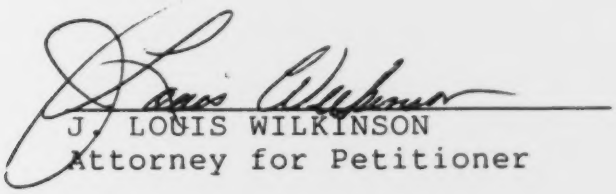
THE COURT: Well, by pleading guilty to this drug law, you are going to come out better than that, I can tell you that much. Okay ? "

There could be no clearer example conceivable of a person being induced to plead because of a hope of reward. The Judge's words speak for themselves, the plea is involuntary and should be set aside and a new trial ordered.

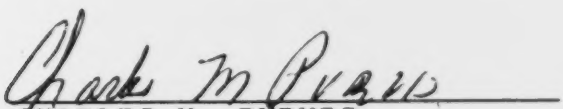
CONCLUSION

The Petitioner submits to this Court that the decision of the Court of Criminal Appeals should be reversed and the case remanded to the trial court.

Respectfully Submitted,



J. LOUIS WILKINSON
Attorney for Petitioner

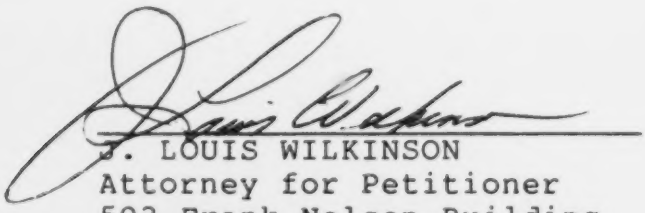


CHARLES M. PURVIS
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Petition for Writ of Certiorari has been mailed this date by certified mail to the Honorable Don Siegelman, Attorney General, at his office, 250 Administrative Building, Montgomery, Alabama 35130, properly addressed, first class postage prepaid.

DATED this the 28th day of September, 1987.



J. LOUIS WILKINSON
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APPENDIX

APPENDIX A-1

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P. O. BOX 351
MONTGOMERY 36101

WILLIAM M. BOWEN, JR.
Presiding Judge
JOHN C. TYSON, III
SAM TAYLOR
JOHN PATTERSON
H. WARD McMILLAN
Judges

MOLLIE JORDAN
Clerk
Ph. 261-4590

6th Div. 214 Jefferson Circuit Court
CC86-01777

Clarence Rudolph vs. State of Alabama
Appellant Appellee

Dear Sir:

You are hereby notified that on March 24, 1987 the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

_____ Notice of Appeal filed. Future correspondence should refer to the above number.

_____ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal:_____.
As to briefs, see Rules 28, 31 and 32, A.R.A.P.

_____ On motion, record on appeal accepted and considered as timely filed in this Court.

_____ Appellant granted seven (7) additional days to file brief. Brief due on _____.

_____ Appellee granted seven (7) additional days to file brief. Brief due on _____.

_____ Appellant granted seven (7) additional days to file **reply** brief. Brief due on _____.

_____ Brief of Appellant filed.

_____ Oral argument requested by appellant.

_____ Reply brief filed.

_____ Oral argument request disallowed; appeal submitted on briefs.

_____ Appeal submitted to the Court for decision in the following manner:

XXX **Affirmed** on appeal. **No Opinion.** Judgment not final, see Rules 40 and 41, A.R.A.P.

_____ Appeal **dismissed. No Opinion.**

_____ Application for rehearing and Rule 39(k), A.R.A.P., motion filed.

_____ Application for rehearing filed.

_____ Application for rehearing **overruled. No Opinion.** Judgment not final, see Rules 39 and 41, A.R.A.P.

_____ Application for rehearing **overruled.** Rule 39(k), A.R.A.P., motion **denied. No Opinion.** Judgment not final, see Rules 39 and 41, A.R.A.P.

_____ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

_____ Appeal placed on rehearing **ex mero motu.**

_____ Certificate of final judgment issued to circuit clerk.

_____

/s/ Mollie Jordan
CLERK
COURT OF CRIMINAL APPEALS OF ALABAMA

APPENDIX A-2

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P. O. BOX 351
MONTGOMERY 36101

WILLIAM M. BOWEN, JR.
Presiding Judge
JOHN C. TYSON, III
SAM TAYLOR
JOHN PATTERSON
H. WARD McMILLAN
Judges

MOLLIE JORDAN
Clerk
Ph. 261-4590

6th Div. 214 Jefferson Circuit Court
CC86-01777

Clarence Rudolph vs. State of Alabama
Appellant Appellee

Dear Sir:

You are hereby notified that on March 24, 1987 the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

_____ Notice of Appeal filed. Future correspondence should refer to the above number.

_____ Record on Appeal filed. Date of Certificate of Completion of Record on Appeal: _____.
As to briefs, see Rules 28, 31 and 32, A.R.A.P.

_____ On motion, record on appeal accepted and considered as timely filed in this Court.

_____ Appellant granted seven (7) additional days to file brief. Brief due on _____.

_____ Appellee granted seven (7) additional days to file brief. Brief due on _____.

_____ Appellant granted seven (7) additional days to file **reply** brief. Brief due on _____.

_____ Brief of Appellant filed.

_____ Oral argument requested by appellant.

_____ Reply brief filed.

_____ Oral argument request disallowed; appeal submitted on briefs.

_____ Appeal submitted to the Court for decision in the following manner:

_____ **Affirmed** on appeal. **No Opinion.** Judgment not final, see Rules 40 and 41, A.R.A.P.

_____ Appeal **dismissed. No Opinion.**

_____ Application for rehearing and Rule 39(k), A.R.A.P., motion filed.

_____ Application for rehearing filed.

_____ Application for rehearing **overruled. No Opinion.** Judgment not final, see Rules 39 and 41, A.R.A.P.

XXX Application for rehearing **overruled.** Rule 39(k), A.R.A.P., motion **denied. No Opinion.** Judgment not final, see Rules 39 and 41, A.R.A.P.

_____ Application for rehearing returned for non-compliance with Rule 40, A.R.A.P.

_____ Appeal placed on rehearing **ex mero motu.**

_____ Certificate of final judgment issued to circuit clerk.

_____

/s/ Mollie Jordan
CLERK
COURT OF CRIMINAL APPEALS OF ALABAMA

APPENDIX A-3

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
P. O. BOX 351
MONTGOMERY 36101

WILLIAM M. BOWEN, JR.
Presiding Judge
JOHN C. TYSON, III
SAM TAYLOR
JOHN PATTERSON
H. WARD McMILLAN
Judges

MOLLIE JORDAN
Clerk
Ph. 261-4590

Hon. J. Louis Wilkinson
Hon Charles M. Purvis
Attorneys at Law
503 Frank Nelson Building
Birmingham, Alabama 35203

Re: 6 Div. 214
Clarence Rudolph vs. State
Jefferson Circuit Court No. CC86-001777

Dear Sir:

The Court of Criminal Appeals has today granted a stay of sixty (60) days from July 31, 1987, to allow filing a petition for writ of certiorari in the United States Supreme Court. This stay will remain in effect until action is taken on the petition, and if petition is granted, until a decision is rendered by the United States Supreme Court.

The certificate of final judgment has been recalled from the lower court pending determination by the United States Supreme Court, but the certificate will be reissued upon the expiration of the sixty-day stay unless this Court is notified by the United States Supreme Court of the filing of said petition in that Court.

Yours very truly,

/s/ Mollie Jordan

Clerk

cc: Clerk, Jefferson Circuit Court
Office of the Attorney General
File

APPENDIX B

THE STATE OF ALABAMA - JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

July 31, 1987

86-905

EX PARTE: Clarence Rudolph

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS

(Re: Clarence Rudolph vs. State)

CCA 6/214

CERTIFICATE OF JUDGMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari be denied.

Costs taxed to petitioner.

HOUSTON, J. - MADDOX, ALMON, BEATTY and ADAMS, JJ., CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appears(s) of record in said Court.

Witness my hand this 31st day of July, 1987.

/s/ Robert G. Esdale

Clerk, Supreme Court of Alabama

APPENDIX C

a) United States Constitution - Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life, limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

b) United States Constitution - Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.